

PATENT

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Morman, M.)	
)	Examiner: Reichle, Karin M.
)	
Serial No.: 10/025,027)	Art Unit: 3761
)	
Filed: 12/19/2001)	Deposit Acct. No.: 04-1403
)	
Title: Method for making an absorbent)	Client ID: 22827
article with elastic cuff areas and)	
necked substrates)	

Mailstop Appeal Brief - Patents
Honorable Commissioner for Patents
U.S. Patent and Trademark Office
Post Office Box 1450
Alexandria, VA 22313-1450

BRIEF ON APPEAL

Honorable Commissioner:

Appellants respectfully submit the enclosed Appeal Brief pursuant to 37 C.F.R. 41.37(c) and request that the final rejection of the pending claims be reversed and that the application be remanded to the Examiner for allowance.

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

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1. REAL PARTY IN INTEREST

The real party in interest in this matter is the assignee of record, Kimberly-Clark Worldwide, Inc.

2. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to the Appellants or the Appellants' legal representative which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

3. STATUS OF CLAIMS

Claims 1-6, 8-15, 28-29 and 32-40 including independent claims 1, 13, 14, 15 and 37 are pending in this application. Claims 1-6, 8-15, 28-29 and 32-33 have been examined. Claims 2, 5 and 8-10 have been withdrawn from the present application. Previously, claims 7, 16-27, and 30-31 were canceled.

All the claims are attached hereto in the Claims Appendix.

In the Final Office Action of October 21, 2007, all of the examined claims 1-6, 8-15, 28-29 and 32-40 were finally rejected under 35 U.S.C. §103(a).

4. STATUS OF AMENDMENTS

New claims 34-40 submitted on December 4, 2007 were not entered into the record. For the purposes of this appeal, these claims are not addressed.

5. SUMMARY OF CLAIMED SUBJECT MATTER

Aspects of the present inventive subject matter include, but are not limited to, a Method for Making an Absorbent Article with Elastic Cuff Areas and Necked Substrates.

INDEPENDENT CLAIM 1

Independent Claim 1 is directed to a method for producing elastic cuffs for garments obtained from a web assembly of precursor garments. (See e.g., Page 4, Lines 16-20;

Page 6, Lines 12-15; FIGS. 4-6.) Necking tension is applied which produces a percent neckdown of about 20% to 80% and creates a first width with the precursor garment being extendible to a second non-necked width wider than the first width when the necking tension is removed. (Page 10, Lines 9-20.) Elastic material in an untensioned state is affixed to a cuff area of each precursor garment while at the first width. (Page 6, Lines 16-19.) Necking tension is then removed from the precursor garment with the elastic material thereon causing the precursor garment to assume the non-necked second width at areas outside the cuff area having the elastic material thereon. (Page 7, Lines 4-8.) The web assembly is then divided into resultant garments. (Page 31, Lines 3-4; FIG. 4.) The elastic material holds the cuff area at a dimension narrower than the second width in the resultant garments. (Page 7, Lines 4-8.)

INDEPENDENT CLAIM 13

Independent Claim 13 is directed to a method for producing selectively elastic areas in a web assembly of precursor garments where the web assembly has a longitudinal and a lateral direction. The web assembly is necked to provide a percent neckdown of about 20% to 80% placing the web assembly at a first width, measured in the lateral direction, the web assembly being expandable to a second non-necked width wider than the first width when the necking tension is removed. (Page 10, Lines 9-20.) Elastic material in an untensioned state is affixed to a selected area of the web assembly while at the first width. (Page 6, Lines 16-19.) Necking tension is then removed from the selected area of the web assembly with the elastic material thereon causing the web assembly to assume the second width at areas outside the selected area of the web assembly while the elastic material holds the selected area of the web assembly at a dimension narrower than the

second width. (Page 7, Lines 4-8.) The web assembly is then divided into resultant garments. (Page 31, Lines 3-4; FIG 4.)

INDEPENDENT CLAIM 14

Independent Claim 14 is directed to a method for producing elastic waistbands for resultant garments obtained from a web assembly of precursor garments having a longitudinal and lateral direction. The web assembly is necked to provide a percent neckdown of about 20% to 80% placing the web assembly at a first width, measured in the lateral direction, the web assembly being extendible to a second non-necked width wider than the first width when the necking tension is removed. (Page 10, Lines 9-20.) Elastic material in an untensioned state is affixed to a waistband portion of each precursor garment while at the first width. (Page 6, Lines 16-19.) Necking tension is then removed from the precursor garment with the elastic material thereon causing the precursor garment to assume the non-necked second width at areas outside the waistband portion having elastic material. (Page 7, Lines 4-8.) The web assembly is then divided into resultant garments. (Page 31, Lines 3-4; FIG. 4.) The elastic material holds the waistband portion at a dimension narrower than the second width in the resultant garments. (Page 7, Lines 4-8.)

INDEPENDENT CLAIM 15

Independent Claim 15 is directed to a method for producing elastic leg cuffs for garments obtained from a web assembly of precursor garments having a longitudinal and lateral direction. Necking tension is applied to the web assembly of precursor garments to neck a leg cuff area of each precursor garment to provide a percent neckdown of about 20% to 80% thereby placing the leg cuff area at a first width in the longitudinal direction of the precursor garment, the leg cuff area being extendible to a second non-necked width

wider than the first width when the necking tension is removed. (Page 7, Lines 4-8.)

Elastic material in an untensioned state is affixed to the leg cuff area of each precursor garment while at the first width. (Page 6, Lines 16-19.) Necking tension is then removed from the precursor garment with the elastic material thereon causing the precursor garment to assume the non-necked second width at areas outside the leg cuff area having the elastic material thereon. (Page 10, Lines 2-3.) The web assembly is then divided into resultant garments. (Page 31, Lines 3-4.) The elastic material holds the leg cuff area at a dimension narrower than the second width in the resultant garments. (Page 7, Lines 4-8.)

This summary does not provide an exhaustive or exclusive view of the present subject matter, and Appellant refers to each of the appended claims and its legal equivalents for a complete statement of the invention.

6. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

In the Office Action, claims 1, 3, 4, 6, 11-15, 28, 29 and 32, including independent claims 1, 13, 14, and 15, were rejected under 35 U.S.C. §§ 102 and 103(a) in view of U.S. Patent No. 5,503,919 issued to Litchholt.

Appellants request review of the above rejections.

7. ARGUMENT

Appellants respectfully submit that the presently pending claims are patentable over the cited references.

I. Independent claims 1, 13, 14, and 15 are patentable over Litchholt and not anticipated pursuant to 35 U.S.C. 102(b).

A claim is anticipated only if each and every element as set forth in the claim is found in a single prior art reference. See *Verdegaal Bros. v. Union Oil Co. of Calif.*, 814 F.2d 628 (Fed. Cir. 1987); M.P.E.P. § 2131. Although anticipation under Section 102 is

not an *ipsissimis verbis* test (e.g., identity of terminology is not required), the elements must be arranged as required by the claim, and the identical invention must be shown in as complete detail as is contained in the claim. *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990); *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226 (Fed. Cir. 1989). Litchholt fails to disclose all of the elements claimed by Appellants.

Appellants initially note that the Office Action acknowledges one of the deficiencies of the Litchholt reference by stating that the ranges claimed by Appellants are not disclosed by Litchholt. (Office Action, Page 7, Line 1.)

Appellants' independent claims 1, 13, 14 and 15 recite the step of affixing elastic strands in an untensioned state to a necked precursor garment. Litchholt does not disclose affixing an elastic material to either: (a) a cuff area of each precursor garment; or (b) a selected area of the web assembly while at a first width, as required by Appellants' independent claims.

Appellants' process selectively applies elastic strands in an untensioned state to discrete and specific cuff regions shown by leg elastics 36 and waist elastics 38 in FIG. 1.

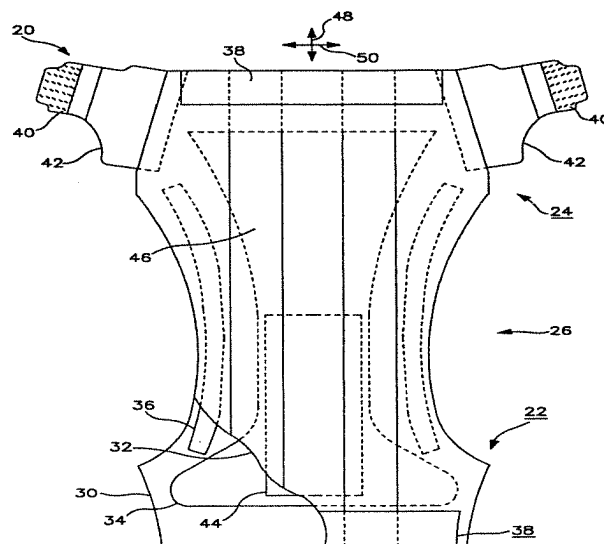


FIG. 1

Instead, Litchholt is directed to an elastomeric hot melt adhesive foam and the process of making a laminate with elastic properties throughout the body of the entire laminate:

It is an object of the present invention to provide foamed elastic components

. . .

In a preferred embodiment, the foams of the present invention are made on-line and integral with an absorbent article to elasticize entire panels, or alternatively, discrete areas (e.g., side panels) of the article.

. . .

The elastomeric adhesive foams and laminates are particularly useful to impart compressibility, resilience, and/or elasticity to absorbent articles. Entire panels of such articles or portions thereof may thus be made compressible, resilient, and/or elastic.

(Litchholt et al., Column 2, Lines 32-34; Column 4, Lines 4-8; Column 22, Lines 29-31.) Accordingly, Litchholt does not disclose Appellants' method of making an absorbent article with an elastic cuff area and necked substrates.

The Office Action at Page 4 equates the "distorted configuration" of Litchholt with Appellants' necking. Appellants respectfully disagree. Appellants' necking tension and neckable materials are a controlled drawing force that upon removal allows the material to pull back or relax to or near its original width (Application, Page 9, Line 7 - Page 10, Line 20). It should be noted that terms such as "necking," "necking tension" or the like do not cover every kind of tension that can be applied to a material or region of a material. Instead, as explained at Page 9, Lines 7-19, the terms refer to a process where a material is tensioned and extended in a first (e.g. length) direction to cause necking and narrowing in a second, mutually perpendicular (e.g. width) direction. No such process is disclosed in

Litchholt. Litchholt's disclosed process is "upon mechanical stretching, be at least to a degree permanently elongated such that it will not fully return to its original undistorted configuration." (Column 26, lines 33-38, emphasis added). Put another way, forces required for permanent distortion exceed forces for necking.

Litchholt fails to disclose other elements claimed by Appellants including: (1) Litchholt does not disclose a web assembly of precursor garments; (2) Litchholt does not neck a web assembly of precursor garments to obtain said first width (i.e. a width corresponding to a percent neckdown of about 20% to about 80%); (3) Litchholt does not disclose applying or removing a necking tension; (4) Litchholt does not disclose dividing a web assembly of precursor garments into resultant garments; and (5) Litchholt does not teach or suggest elastic strands for leg elastics.

II. Independent Claims 1, 13, 14 and 15 are Patentable over Litchholt within the Meaning of 35 U.S.C. § 103.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. See *In re Fine*, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966). "[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a prima facie case of unpatentability." *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Furthermore, "there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1385, 1396 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)). Accordingly, even if all elements of a claim are disclosed in

various prior art references, the claimed invention taken as a whole cannot be said to be obvious without some reason given in the prior art why one of ordinary skill would have been prompted to modify the teachings of the references to arrive at the claimed invention. See e.g., *In re Regel*, 188 U.S.P.Q. 132 (C.C.P.A. 1975).

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Appellant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); MPEP § 2143. The Examiner must avoid hindsight. *In re Bond*, 910 F.2d 831, 834, 15 USPQ2d 1566, 1568 (Fed. Cir. 1990).

A. Litchholt and the Patents it Incorporates by Reference Teach Away From Applying Elastic Strands in an Untensioned State as Claimed by Appellants.

As stated above, the entire disclosure of Litchholt is directed to an elastomeric hot melt adhesive foam and the process of making a laminate with elastic properties throughout the entire laminate. In fact, based on the teachings of the patents Litchholt incorporates by reference, Litchholt expressly teaches away from affixing elastic strands in a nontensioned state as claimed by Appellants. The Federal Circuit has several times expressly addressed the issue of how to evaluate an alleged case of *prima facie* obviousness to determine whether it has been properly made. For instance, "a *prima facie* case of obviousness can be rebutted if the appellant can show that the art in any material respect taught away from the claimed invention." *In re Haruna*, 249 F.3d 1327, 1335 (Fed. Cir. 2001), citing *In re Geisler*, 116 F.3d 1465, 1469 (Fed. Cir. 1997).

A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the

appellant. *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994). Furthermore, a “prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention.” M.P.E.P. 8th Ed., Rev. 2, §2141.02, citing *W.L. Gore & Associates v Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983).

In the present case, the Office Action does not consider Appellants’ explicit recited claim language:

. . . affixing strands of elastic material in an untensioned state . . .

(Claims 1, 13, 14, and 15.) Litchholt does not teach or suggest any method for attaching elastic strands. Instead, Litchholt states:

. . . the elasticized leg cuff additionally comprises an elastic gasketing cuff with one or more elastic strands positioned outboard of the barrier cuff such as described in the above referenced U.S. Pat. No. 4,695,278.

(Column 28, lines 17-21, emphasis added). (U.S. Patent 4,695,278 (“Lawson”) is incorporated by reference at column 23, lines 3-6 of Litchholt.) Lawson, in turn, discloses an absorbent article having dual cuffs. Lawson does not teach or suggest any other method of attaching elastic strands to the cuffs of Litchholt. At Column 7, Lines 40-48, Lawson states that a suitable method for manufacture is disclosed in U.S. Patent 4,081,301 (“Buell ‘301”) and incorporates same by reference. Buell ‘301 is titled “Method And Apparatus For Continuously Attaching Discrete, Stretched Elastic Strands To Predetermined Isolated Portions Of Disposable Absorbent Products.” (Emphasis added). Buell ‘301 discloses:

The inventive concept in its broadest sense relates to the continuous adherence of discrete lengths of stretched elastic . . .

(Buell ‘301, Abstract.)

Buell '301 only discloses applying elastic strands that are stretched by three metering rolls before being applied. (Buell '301, Column 5, Lines 39-44.) This is not Appellants' process of using elastic strands in an untensioned state for a simpler manufacturing method. Litchholt only teaches applying stretched elastic strands by the incorporation of Lawson and Buell '301. Clearly, by incorporating teachings that elastic strands are applied only when stretched, Litchholt teaches away from Appellants' method of affixing elastic strands in an untensioned state.

Therefore, one skilled in the art would not have a motivation or an expectation of success to modify Litchholt to arrive at Appellants' elastic strands applied in untensioned state based on the stretched elastic strands disclosed by Litchholt in view of Lawson and Buell '301.

Further, Litchholt also teaches away from the claimed invention by disclosing an elastic adhesive foam. One skilled in the art would not expect to use a separate adhesive to affix elastic adhesive foam. Conversely, Appellants teach using an adhesive or bonding to affix the elastic strands taught by Appellants' invention.

For at least the reasons set forth above, Appellants respectfully submits that independent claims 1, 13, 14 and 15 patentably define over the above-cited references, taken alone or in any proper combination. Appellants also respectfully submit that for at least the reasons indicated above relating to corresponding independent claims, the pending dependent claims patentably define over the references cited.


Appellants respectfully assert that the present Application is in complete condition for allowance. Thus, Appellants request allowance of the presently pending claims.

Respectfully submitted,

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A. **CLAIMS APPENDIX**

1. (Previously Presented) A method of producing elastic cuffs for resultant garments obtained from a web assembly of precursor garments, the steps comprising:

a) applying necking tension to the web assembly of precursor garments to neck each precursor garment to provide a percent neckdown of about 20% to about 80% thereby placing the precursor garment at a first width, the precursor garment being extendible to a second non-necked width wider than the first width when the necking tension is removed;

b) affixing strands of elastic material in an untensioned state to a cuff area of each precursor garment while at the first width;

c) removing necking tension from each of the precursor garments with the elastic material thereon and causing the precursor garment to assume the non-necked second width at areas outside the cuff area having the elastic material thereon; and

d) dividing the web assembly of precursor garments into resultant garments;

e) whereby the elastic material holds the cuff area at a dimension narrower than the second width in the resultant garments.

2. (Withdrawn) The method according to Claim 1 wherein the step of affixing an elastic material to the cuff area further comprises applying a pre-elastic when the precursor garments are at the first width, and treating the pre-elastic to become an elastomeric while the precursor garments are at the first width.

3. (Previously Presented) The method according to Claim 1 wherein each of the precursor garments comprises a backsheet defined by the web assembly.

4. (Previously Presented) The method according to Claim 3 wherein each of the precursor garments further comprises a topsheet defined by the web assembly.

5. (Withdrawn) The method according to Claim 1 wherein the precursor garments comprise an assembled diaper lacking only the cuff area.

6. (Previously Presented) The method according to Claim 3 wherein the backsheet comprises material selected from the group comprising: neckable nonwovens, neckable films, neckable laminates, or combinations thereof.

7. (Cancelled)

8. (Withdrawn) The method according to Claim 1 wherein the elastic material is applied under tension thereby gathering the precursor garment and providing a doubly expandable cuff area with a first stage expansion taking out the gathers, and a second stage expansion expanding the material of the garment body.

9. (Withdrawn) The method according to Claim 1 further including applying a precursor elastic to the cuff area and treating the precursor elastic to become elastomeric while the cuff area is at the first width.

10. (Withdrawn) The method according to Claim 9 further including treating the precursor elastic with heat.

11. (Original) The method according to Claim 1 wherein the cuff area is a leg cuff area.

12. (Original) The method according to Claim 1 wherein the cuff area is a waistband area.

13. (Previously Presented) A method of producing selectively elastic areas in a web assembly of precursor garments, the web assembly having a longitudinal direction and a lateral direction, the steps comprising:

- a) necking the web assembly of precursor garments to provide a percent neckdown of about 20% to about 80% thereby placing the web assembly at a first width, with width being measured in the lateral direction, the web assembly being expandable to a second non-necked width wider than the first width when the necking tension is removed;
- b) affixing strands of elastic material in an untensioned state to a selected area of the web assembly when the web assembly is at the first width;
- c) removing necking tension from the selected area of the web assembly with the elastic thereon and causing the web assembly to assume the second width at areas outside the selected area of the web assembly, whereby the elastic material holds the selected area of the web assembly at a dimension narrower than the second width; and
- d) dividing the web assembly of precursor garments into resultant garments.

14. (Previously Presented) A method of producing elastic waistbands for resultant garments obtained from a web assembly of precursor garments, the precursor garments having a longitudinal direction and a lateral direction, the steps comprising:

- a) applying necking tension to the web assembly of precursor garments to neck each precursor garment to provide a percent neckdown of about 20% to about 80% thereby placing the precursor garment at a first width in the lateral direction of the precursor garment, the precursor garment being extendible to a second non-necked width wider than the first width when the necking tension is removed;
- b) affixing strands of elastic material in an untensioned state to a waistband portion of each precursor garment while at the first width;
- c) removing necking tension from each of the precursor garments with the elastic material thereon and causing the precursor garment to assume the non-necked second width at areas outside the waistband portion having elastic material; and
- d) dividing the web assembly of precursor garments into resultant garments;
- e) whereby the elastic material holds the waistband portion at a dimension narrower than the second width in the resultant garments.

15. (Previously Presented) A method of producing elastic leg cuffs for resultant garments obtained from a web assembly of precursor garments, the precursor garments having a longitudinal direction and a lateral direction, the steps comprising:

- a) applying necking tension to the web assembly of precursor garments to neck a leg cuff area of each precursor garment to provide a percent neckdown of about 20% to about 80% thereby placing the leg cuff area at a first width in the longitudinal direction of

the precursor garment, the leg cuff area of the precursor garment being extendible to a second non-necked width wider than the first width when the necking tension is removed;

b) affixing strands of elastic material in an untensioned state to the leg cuff area of each precursor garment while at the first width;

c) removing necking tension from each of the precursor garments with the elastic material thereon and causing the precursor garment to assume the non-necked second width at areas outside the leg cuff area having elastic material; and

d) dividing the web assembly of precursor garments into resultant garments;

e) whereby the elastic material holds the leg cuff area at a dimension narrower than the second width in the resultant garments.

16-27. (Cancelled)

28. (Previously Presented) The method according to Claim 1 wherein the cuff area is necked to from about 20 to about 60%.

29. (Previously Presented) The method according to Claim 1 wherein the cuff area is necked to from about 30 to about 50%.

30-31. (Cancelled)

32. (Previously Presented) The method according to Claim 13 wherein the web is necked to from about 20 to about 60%.

33. (Previously Presented) The method according to Claim 13 wherein the web is necked to from about 30 to about 50%.

B. EVIDENCE APPENDIX

None

C. RELATED PROCEEDINGS APPENDIX

None